

WC-07-142



FILED/ACCEPTED

JUL - 2 2007

Federal Communications Commission
Office of the Secretary

July 2, 2007

Secretary
Federal Communications Commission
Washington, DC 20554

Attention: Competitive Pricing Division, Wireline Competition Bureau

RE: Embarq's Petition for Waiver to Permit Pricing Flexibility for Specialized Network Services

Dear Secretary,

Enclosed for filing is Embarq's Petition for Waiver to Permit Pricing Flexibility for Specialized Network Services (SNS). In order to alleviate a barrier to effective competition in the packet-switched services market, Embarq seeks a waiver of Sections 1.774, 69.709, 69.711 and 69.727 of the Commission's price cap rules to exercise pricing flexibility for these services.

A waiver of these rules will allow Embarq Phase I price flex treatment for SNS service in those Metropolitan Statistical Areas (MSAs) where Embarq has already been granted Phase I or Phase II pricing flexibility for its other special access services.

The original letter of petition, along with FCC Form 159 and filing fees in the amount of \$775, is concurrently being delivered via Federal Express to the Wholesale Lockbox Shift Supervisor - Mellon Bank, pursuant to Section 61.32(b) of the Commission's Rules. Acknowledgment and date of receipt of this petition by the Mellon Bank is requested. A duplicate copy of the petition letter is provided for this purpose.

All correspondence and inquiries in connection with this filing should be addressed to me at 5454 West 110th Street, Mailstop KSOPKJ0401-404, Overland Park, Kansas 66211, (913) 345-6691.

Craig T. Smith
General Attorney

Attachments
Cover Letter
Petition for Waiver

WC 07-142

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Wavier of Pricing Flexibility)	WC Docket No. 07-
Rules for Specialized Network Services)	

**EMBARQ LOCAL OPERATING COMPANIES' PETITION FOR WAIVER TO
PERMIT PRICING FLEXIBILITY FOR SPECIALIZED NETWORK
SERVICES**

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July 2, 2007

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SUMMARY OF COMMENTS

In order to alleviate a barrier to effective competition in the packet-switched services market, Embarq seeks a waiver of the Commission's price cap rules identical to that already granted Verizon, Qwest, and AT&T.

Currently, Embarq's packet-switched Specialized Network Services ("SNS") are not in price cap and therefore are not eligible for price flex treatment. Rather, these SNS special access services must be offered through generally available, publicly tariffed prices which impede Embarq's ability to effectively compete with competitors that are able to structure individually developed private contracts. Such restraint on effective competition is damaging to consumers and not in the public interest.

Accordingly, Embarq seeks a waiver of the price cap rules to allow Phase I price flex treatment for SNS service in those Metropolitan Statistical Areas ("MSAs") where Embarq has already been granted Phase I or Phase II pricing flexibility for its other special access services. Special circumstances warrant the grant of this waiver because Embarq excluded packet-switched services from price cap to comply with Commission Rules establishing the price cap regime at a time when there was uncertainty over the regulatory treatment of advanced services such as packet-switched services. Yet, today the Commission has recognized that competing carriers provide this same services, free of regulatory restraint in granting identical relief as requested herein to Verizon, AT&T, and Qwest. Such regulatory relief is in the public interest because it promotes more effective competition.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
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**EMBARQ LOCAL OPERATING COMPANIES' PETITION FOR WAIVER TO
PERMIT PRICING FLEXIBILITY FOR SPECIALIZED NETWORK SERVICES**

The Embarq Local Operating Companies ("Embarq")¹ offer packet-switched special access services, called Specialized Network Services ("SNS"), to other carriers and large business customers, and they face considerable competition for this business. Currently, Embarq must offer SNS at generally available, publicly tariffed prices. Accordingly, competitors are routinely able to undercut Embarq's generally available, publicly tariff price through privately negotiated contract pricing.

Embarq must have the flexibility to offer individualized rates so that it can compete effectively. Embarq did not include SNS in the relevant price cap regulation buckets, however, because Embarq was attempting to comply with Commission regulations. Therefore, Embarq

¹ Embarq is comprised of 19 separate ILECs divided among 9 interstate tariff filing regions as shown on Attachment 1. The 19 ILECs were formerly known as the Sprint Local Operating Telephone Companies. The legal entities themselves have not changed – only their corporate parent. Formerly, these ILECs were wholly-owned subsidiaries, directly and indirectly, of Sprint Nextel. On or about May 18, 2006, Sprint Nextel transferred these wholly-owned subsidiaries and to another wholly-owned subsidiary, Embarq Corporation, after which Sprint Nextel distributed the stock of Embarq Corporation *pro rata* to the existing Sprint Nextel shareholders as a dividend. Once that distribution was made, Embarq became a separate, publicly traded, stand-alone company in which Sprint Nextel retained no ownership interest.

cannot exercise pricing flexibility in those markets where it has met the competitive thresholds for Phase I and Phase II pricing flexibility.

To overcome this barrier to competition, Embarq hereby requests, pursuant to Rule 1.3 (47 C.F.R. § 1.3), the Commission to waive certain requirements under the Commission's price cap rules and regulations to allow Embarq to exercise pricing flexibility for SNS.² This pricing flexibility would be the same pricing flexibility Embarq already has for other special access services where the Commission's market competitiveness tests have been met. Embarq uses packet-switched technology and seeks the exact same pricing flexibility relief as was requested and was granted for packet-based services in the *Qwest Advanced Services Pricing Flexibility Order*,³ and as was granted in the *Verizon Advanced Services Pricing Flexibility Order*,⁴ and the *AT&T Advanced Services Pricing Flexibility Order*.⁵ As such, this Petition presents no new or novel questions of law or fact. Granting Embarq this pricing flexibility will serve the public interest because it will help consumers receive the full benefits of market competition.

² See, Embarq Tariff F.C.C. No. 1, Section 8. Individual SNS; Frame Relay, Asynchronous Transfer Mode Service (ATM), and Custom Access Solutions are described more fully in Attachment 2, which provides the same information about SNS as Commission Staff requested from Verizon in the *Verizon Pricing Flexibility Order* (see, note 2 below). There is a fourth product in Section 8, Wide Area Data Network Services ("WADNS") that is only available in Washington and Oregon; has had no customers using this service since 1996. Embarq is currently exploring the discontinuance of WADNS. Therefore, Embarq is not seeking any relief with regard to WADNS in this Petition.

³ *Qwest Petition for Waiver of Pricing Flexibility Rules for Advanced Communications Networks Services*, 22 FCC Rcd 7482 (2007).

⁴ *Petition for Waiver of Pricing Flexibility Rules for Fast Packet Services; Petition for Forbearance Under 47 U.S.C. Section 160(c) from Pricing Flexibility Rules for Fast Packet Services*, WC Docket No. 04-246, Memorandum Opinion and Order, 20 FCC Rcd 16840 (2005) ("*Verizon Advanced Services Pricing Flexibility Order*")

⁵ *SBC Communications Petition for Wavier of Section 61.42 of the Commission's Rules*, 22 FCC Rcd 7224 (2007).

Specifically, Embarq seeks Phase I pricing flexibility for these services in the Metropolitan Statistical Areas (“MSAs”)⁶ where Embarq has already qualified or qualifies in the future for Phase I or Phase II pricing flexibility for other special access services. Embarq also requests that the waiver extend to any new Specialized Network Services that it introduces in its Tariff F.C.C. No. 1 in the future for the MSAs where Embarq has qualified, or qualifies in the future, for pricing flexibility.⁷

Subsequent to the *Verizon Advanced Services Pricing Flexibility Order* the Commission, by operation of law, granted Verizon’s Petition for Forbearance from Title II and Computer Inquiry Rules⁸ with Respect to their Broadband Services, in effect giving Verizon contract pricing authority for advanced services, regardless of whether pricing flexibility has been granted.⁹ On July 26, 2006, Embarq filed its Petition for Forbearance from Title II and

⁶ Pursuant to three orders [*In the Matter of Sprint Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, 16 FCC Rcd 11005 (2001); *In the Matter of Sprint Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, 17 FCC Rcd 2335 (2002); and *In the Matter of Sprint Local Telephone Companies Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, 21 FCC Rcd 3412 (2006)], Embarq has qualified for Phase I or Phase II pricing flexibility in the following Metropolitan Statistical Areas: Fort Myers – Cape Coral, Florida; Fort Walton Beach – Crestview, Florida; Ocala, Florida; Orlando, Florida; Tallahassee, Florida; Fayetteville, North Carolina, Greenville; North Carolina; Hickory, North Carolina; Rocky Mount, North Carolina; Middlesex-Somerset-Hunterdon, New Jersey; Las Vegas, Nevada; Harrisburg, Pennsylvania; Pittsburgh, Pennsylvania; Johnson City – Kingsport – Bristol, Tennessee/Virginia; Dallas, Texas; and Charlottesville, Virginia.

⁷ See, *Verizon Pricing Flexibility Order* at ¶ 17 (“The waiver granted herein extends to any new advanced service that Verizon may introduce in this tariff in the future for the MSAs where it has qualified for or seeks price flexibility.”)

⁸ *Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, WC Docket No. 04-440, filed December 20, 2004

⁹ See, Joint Statement of Chairman Kevin J. Martin and Commissioner Deborah Taylor Tate, Verizon Telephone Companies Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to their Broadband Services is granted by Operation of Law, *Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and*

Computer Inquiry Rules for Broadband Services, similar to the *Verizon Forbearance Petition*.¹⁰

If the *Embarq Forbearance Petition* is granted in full during the time the instant petition is pending, the instant petition will be moot. If forbearance is not granted in full, however, the Commission should grant this Petition to ensure that the public interest is served through the operation of truly competitive markets for SNS.

I. BACKGROUND

A. Embarq SNS are Special Access Services

SNS, which are Embarq services that use packet-switched technology, currently include the following services for which Embarq seeks pricing flexibility: Frame Relay Services (“FRS”), Wide Area Data Network Services (“WADN”), Asynchronous Transfer Mode (“ATM”) Services, and Custom Access Solutions. These services reach the end user through a special access line connection. Like the packet-switched advanced services offered by AT&T, Qwest and Verizon, Embarq’s SNS are dedicated facilities that enable an end user customer to connect two or more of its locations, and thus are special access services.¹¹ The special access line consists of a “channel termination” facility between the end user and the Embarq office serving the end user, and may include a dedicated transport facility between Embarq’s offices.¹²

Computer Inquiry Rules with Respect to Their Broadband Services, WC Docket No. 04-440, , March 20, 2006 (“*Verizon Forbearance Petition News Release*”), *petitions for review pending*, *Sprint Nextel v. FCC*, 06-1111, *COMPTEL v. FCC*, 06-1113 (DC Cir., filed March 29, 2006).

¹⁰ *Petition of Embarq Local Operating Companies For Forbearance Under 47 U.S.C. § 160(c) From Application of Computer Inquiry and certain Title II Common-Carrier Requirements*, WC Docket No. 06-147 (filed July 26, 2006) (“*Embarq Forbearance Petition*”).

¹¹ See, *Verizon Pricing Flexibility Order*, at 16845 ¶ 10 and n. 39 (explaining why Verizon’s packet-switched advance services are special access services.)

¹² For example, Embarq’s tariff refers to “ATM access termination”, as providing the connection between the customer’s ATM termination equipment and the serving wire center of that equipment and refers to “ATM Interoffice Mileage, as providing the end office equipment and the transmission channel between the serving wire center of the customer’s designated

In other words, Embarq's SNS use a channel termination facility between the end-user and Embarq's office serving that end-user, and the equivalent of non-channel termination facilities provide the rest of the service.

B. Embarq SNS are currently tariffed outside of price cap regulation.

In its *Dominant Carrier Second R&O* regarding Policy and Rules Concerning Dominant Carriers, the Commission excluded packet switched-services from price cap regulation.¹³ As a result, Embarq has retained its SNS outside of price caps. Accordingly, these Embarq SNS remain subject to traditional rate-of-return regulatory treatment. Meanwhile, for its other special access and dedicated transport services that are under price caps, Embarq has sought and obtained certain Phase I and Phase II pricing flexibility for these services by demonstrating sufficient competition to permit such pricing flexibility.¹⁴

Embarq is unable to exercise pricing flexibility for its SNS despite the fact that these services face considerable competition. Embarq's SNS were excluded from price-caps and consequently pricing flexibility, Embarq does not have the service offering flexibility for these special access services that it otherwise would have. If the Commission had not excluded packet-switched services from price cap regulation, Embarq's SNS would have been within the categories for which Embarq has since obtained pricing flexibility. There is no reasonable policy justification for such result, so the Commission should grant the Petition and restore symmetry of treatment.

premises and the serving wire center of the ATM switch. See, Embarq Tariff F.C.C. No. 1, Section 8.6.2.

¹³ *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786, 6810 ¶ 195 (1990) ("*Dominant Carrier Second R&O*") (stating that packet switched service was "not subject to scrutiny as part of our investigation of LEC productivity," and thus should be excluded from price cap regulation).

¹⁴ See n.4 *supra*.

II. THE COMMISSION SHOULD WAIVE ITS RULES TO GRANT EMBARQ PHASE I PRICING FLEXIBILITY FOR ITS PACKET-SWITCHED SERVICES WHERE IT ALREADY HAS PHASE I & PHASE II PRICING FLEXIBILITY FOR ITS OTHER SPECIAL ACCESS SERVICES

Embarq seeks a waiver of the general requirement that services must be covered by price cap regulation to be eligible for pricing flexibility for Phase I and II relief. Embarq also seeks a waiver of the specific requirements for demonstrating that these services are eligible for Phase I pricing flexibility where Embarq already has Phase I and II pricing flexibility for other special access services. Specifically, Embarq seeks waivers of:

- (1) the requirement that services must be covered by price cap regulation to be eligible for pricing flexibility;
- (2) section 1.774 (petitions for pricing flexibility must include collocation and wire center data by MSA and must show that the price cap LEC has met relevant competitive thresholds);
- (3) section 69.709 (requests for pricing flexibility for most dedicated transport and special access services);
- (4) section 69.711 (requests for pricing flexibility for channel terminations between LEC end offices and customer premises); and
- (5) section 69.727 (Phase I relief) of the Commission's pricing flexibility rules¹⁵ for its SNS packet-switched services.¹⁶

It is appropriate for the Commission to grant the waivers Embarq seeks because Embarq meets the requirements for granting such relief. In accord with 47 C.F.R. § 1.3 the Commission may waive its regulations when good cause is demonstrated by a showing (a) there are special

¹⁵ Respectively, 47 C.F.R. §§ 1.774, 69.709, 69.711, and 69.727.

¹⁶ The relief sought is identical to that granted Verizon in the *Verizon Pricing Flexibility Order* at paragraph 8.

circumstances warranting deviation from the general rule and (b) waiver will serve the public interest.¹⁷

A. Special circumstances warrant deviation from the general rule.

It is well established that the Commission may waive its regulations for good cause shown.¹⁸ As has been frequently noted, a waiver request must demonstrate (a) special circumstances warranting a deviation from the general rule, and (b) that such a deviation will serve the public interest.¹⁹ Embarq submits that this waiver petition meets both requirements. The petition seeks the same relief, and Embarq has provided support similar to that upon which the Commission relied to grant waivers in the *Verizon Advanced Services Waiver Order* and the *Qwest Advanced Services Waiver Order* and the *AT&T Advanced Services Waiver Order*. Accordingly, the Commission should find that good cause exists to allow Embarq to exercise pricing flexibility for advanced services that rely on packet technology, similar to the pricing flexibility relief that it has for other special access services.²⁰ Specifically, Embarq seeks a waiver of sections 1.774, 69.709, 69.711, and 69.727 of the Commission's pricing flexibility rules enabling Embarq to exercise Phase I pricing flexibility for packet-based services in those MSAs where it already has qualified for Phase I or II pricing flexibility for its special access services.²¹

¹⁷ *Verizon Pricing Flexibility Order* at ¶ 8, n. 30 [citing *Northeast Cellular Telephone Co. v. FCC*, 89 F.2d 1164 (D.C. Cir. 1990) citing *WAIT Radio v. FCC*, 48 F.2d 1153, 1159 (D.C. Cir. 1969).]

¹⁸ 47 C.F.R. § 1.3.

¹⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

²⁰ See *Verizon Advanced Services Waiver Order*, 20 FCC Rcd at 16844 ¶ 8

²¹ Specifically, Embarq requests a waiver of the requirement that services must be in price caps to be eligible for pricing flexibility for Phase I and II relief and the following rules as applicable to Phase I relief: 47 C.F.R. §§ 1.774 (requiring petitions for pricing flexibility to include collocation and wire center data by MSA and to "show that the price cap LEC has met the relevant thresholds"), 69.709(b) (establishing Phase I triggers for special access services

Where Embarq has not yet qualified for pricing flexibility, Embarq hereby requests that it may include such advanced services in any future pricing flexibility petitions²²

The Commission should find that Embarq has demonstrated the special circumstances that warrant a waiver in this case. Specifically, Embarq excluded packet-switched advanced services from its price cap plan to comply with Commission rules. Consequently, Embarq was unable to take advantage of pricing flexibility for these services when it became an option several years later. The Commission recognized recently in the *Qwest Advanced Services Waiver Order* and the *AT&T Advanced Services Waiver Order*, and earlier in the *Verizon Advanced Services Waiver Order*, that competing carriers are able to provide their own advanced services, and some pricing flexibility for the ILEC was warranted.²³ Embarq hereby asks the Commission to make a similar finding and provide Embarq with similar relief in similar circumstances.

Embarq should not have to incorporate SNS into price caps before they are eligible for pricing flexibility. This is a particularly appropriate case for a waiver because Embarq did not include the advanced services at issue in price caps because of questions regarding the appropriate regulatory treatment of advanced services. This is currently an open question before the Commission in pending rulemaking proceedings, such as those initiated by the *Dom/Non-Dom NPRM* and the *Special Access NPRM*.²⁴ Nonetheless, and consistent with the Commission's *AT&T Advanced Services Waiver Order*, *Qwest Advanced Services Waiver Order* and *Verizon Advanced Services Waiver Order*, these procedural circumstances should not

other than channel terminations between LEC end offices and the customer premises), 69.711(b) (establishing Phase I triggers for end-user channel terminations), and 69.727(a) (requiring price cap LECs to satisfy Phase I triggers, but the waiver does not apply to the rule's other provisions).

²² See, e.g., 47 C.F.R. § 1.774; 47 C.F.R. Part 69, Subpart H.

²³ See, e.g., *Verizon Advanced Services Waiver Order*, 20 FCC Rcd at 16846, ¶ 11.

²⁴ See generally *Dom/Non-Dom NPRM*, 16 FCC Rcd 22745; *Special Access NPRM*, 20 FCC Rcd 1994.

preclude Embarq from obtaining pricing flexibility for these services.²⁵ Moreover, the Commission has concluded that competitors would not be impaired in their ability to offer their own advanced services to customers if they lack access to incumbent LECs' packet switching.²⁶

B. Granting the requested waiver will serve the Public Interest.

Granting this waiver serves the public interest because (1) doing so promotes competition for advanced services, resulting in more choices and better prices for consumers and (2) the administrative and regulatory burdens associated with requiring Embarq to satisfy additional competitive showings for Phase I relief outweigh the benefits of such a showing. Moreover, additional public interest factors support granting Embarq the requested waiver.

First, granting this relief serves the public interest because it promotes competition for these services by enabling Embarq to better respond to competitive pressures by offering contract arrangements, including contract pricing, that are responsive to customer demand for these services. As the Commission has recognized, permitting this type of waiver for these services is consistent with the policies underlying the Commission's price cap and pricing flexibility rules.²⁷ In the markets where Embarq has been granted price flexibility, Embarq will be able to offer lower rates to meet competition. Embarq will be able to respond effectively to marketplace developments by offering customized pricing, discounts, and flexible contract terms that competitors already can and do offer. Granting Embarq pricing flexibility will enable Embarq to price its services competitively and in turn exert downward pressure on the rates

²⁵ See, e.g., *Verizon Advanced Services Waiver Order*, 20 FCC Rcd at 16844, ¶ 8 n.31.

²⁶ See, e.g., *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17321-23, ¶¶ 537-39 (2003).

²⁷ *Verizon Pricing Flexibility Order* at 16848-49 ¶ 15 citing *Pricing Flexibility Order*, 14 FCC Rcd 14221, 14225 ((1999), *aff'd*, *WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

offered by other providers. Also, by enabling Embarq to provide individualized competitive offers, customers will benefit from greater competition and more choices.

Second, granting this waiver serves the public interest because the administrative and regulatory burdens associated with requiring Embarq to satisfy additional competitive showing for Phase I relief outweigh the benefits of such a showing. Embarq has already demonstrated in the MSAs in question that pricing flexibility for special access service is warranted. To make a competitive showing for the packet-switched services at issue in this petition would be duplicative, creating unnecessary administrative burdens and wasted resources.

The Commission has recognized that permitting a waiver in this circumstance does not undermine the rationale of the competitive showing required in its pricing flexibility rules.²⁸ The Commission recognized that Verizon's prior demonstration of competition sufficient to warrant Phase I pricing flexibility for its special access services meant that

"Verizon has demonstrated that competitors have made irreversible investment in the facilities needed to provide special access services in the markets at issue. Accordingly, we find that Verizon demonstrates that sufficient competition exists to warrant pricing flexibility for its advanced services in those markets"²⁹

Applying that same analysis here, where Embarq, too, has made the same prior demonstration of competition, compels a finding that Embarq's requested waiver is appropriate.

Three additional factors warrant the Commission granting this waiver. The first is the regulatory treatment of SNS compared to the regulatory treatment of Embarq's other special access services in today's competitive marketplace for these services. The general approach underlying the Commission's access charges reform efforts is to lessen regulation of incumbent local exchange carrier pricing for interstate access services as market competition for those

²⁸ *Id.* at 16849 ¶ 16.

²⁹ *Id.*

services increases.³⁰ Embarq already demonstrated that there is sufficient competition to warrant pricing flexibility for its advanced services in the MSAs where it received pricing flexibility. Yet, Embarq's SNS remain subject to greater regulatory constraints than Embarq's other special access services in these markets. The requested waiver is needed to correct this inequitable regulatory situation.

Second, Embarq seeks the exact relief that the Commission previously granted to Verizon, Qwest, and AT&T.³¹ Given that Embarq seeks nothing more than the relief received by those carriers for the same type of services and for the same reasons, there is no reasonable basis for the Commission not to afford Embarq the same relief. An agency should not treat similarly situated entities differently without a reasoned explanation that must be more than merely an enumeration of factual differences, but must explain the relevance of those differences to the purposes of the legislation that the agency is administering.³² Otherwise, the agency action affording disparate treatment must be struck down as arbitrary and an abuse of agency discretion.³³ Accordingly, Embarq is entitled to the same relief that the Commission granted Verizon unless the Commission can articulate a rational basis grounded in the purposes of the Act for denying Embarq the relief granted Verizon.

³⁰ *Verizon Pricing Flexibility Order* at ¶ 15 (citing *Pricing Flexibility Order*, 14 FCC Rcd 14221, 14225 ((1999), *aff'd*, *WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001)).

³¹ *See, Verizon Pricing Flexibility Order*.

³² *Garrett v. FCC*, 513 F. 2d 1056, 1060 (D.C. Cir. 1975); *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732-33 (D.C. Cir. 1965). *See also, Public Media Center, et al. v. FCC*, 587 F.2d 1322, 1321 n. 40 (D.C. Cir. 1978) (Recently, the Commission indicated that *Melody Music* applies only in license renewal proceedings. [Citation omitted.] Such a restrictive reading of *Melody Music* is inconsistent with the Commission's own precedent [citations omitted], as well as with this court's broader application of that doctrine ... (citation omitted)).

³³ *Garrett v. FCC* at 1060.

Third, as the Commission found in the *Verizon Pricing Flexibility Order*, granting Embarq the requested waiver will not harm the policies underlying the Commission's price cap and price flexibility rules, but rather will serve the purpose of granting greater flexibility as competition develops.³⁴ Moreover, where a competitive alternative doesn't exist in Embarq's territory, Section 8 generally available tariff prices will still be subject to particular scrutiny after grant of this Waiver request.

III. CONCLUSION

For the reasons just stated, Embarq respectfully requests that the Commission grant this petition.

Respectfully submitted,

EMBARQ CORPORATION

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³⁴ The Commission wrote:

The Commission established the pricing flexibility framework to permit price cap LECs greater pricing flexibility as great competition develops. The policy underlying Phase I pricing flexibility is to allow incumbent LECs to respond to competition as it develops, while at the same time using the price cap mechanism to guard against unreasonable rate increases for those customers that do not yet have competitive alternatives.

Verizon Pricing Flexibility Order @ 16848.

Attachment 1
Page 1 of 2

***Embarq Local Operating Companies
and Study Areas (ELOC)***

<u>Operating Company</u>	<u>COSA</u>
Central Telephone Company – Nevada	CENV
United Telephone Company of Indiana, Inc.	UTIN
Embarq Local Operating Companies – Northwest	UTNW
United Telephone Company of the Northwest	
(Oregon)	UTOR
(Washington)	UTWA
United Telephone Company of Ohio	UTOH
Embarq Local Operating Companies – Eastern	UTEG
United Telephone Company of New Jersey, Inc.	UTNJ
The United Telephone Company of Pennsylvania	UTPA
Embarq Florida, Inc.	UCFL
Embarq Local Operating Companies – Midwest	UCMW
Central Telephone Company of Texas	CETX
United Telephone Company of Eastern Kansas	UTEK
United Telephone Company of Kansas	UTKS
Embarq Minnesota, Inc.	UTMN
Embarq Missouri, Inc.	UTMO
Embarq Missouri, Inc. dba United Telephone Company of Southeast Kansas	UTSK
United Telephone Company of Southcentral Kansas	UTCK
United Telephone Company of Texas, Inc.	UTTX
United Telephone Company of the West	
(Nebraska)	UTNE
(Wyoming)	UTWY

***Embarq Local Operating Companies
and Study Areas (ELOC)***

<u>Operating Company</u>	<u>COSA</u>
Embarq Local Operating Companies - North Carolina	UCNC
Carolina Telephone and Telegraph Company	UTNC
Central Telephone Company - North Carolina	CENC
Embarq Local Operating Companies – Southeast	UCSE
Central Telephone Company of Virginia	CEVA
United Telephone of the Southeast, Inc.	UTSE
(Tennessee)	UTTN
(Virginia)	UTVA
United Telephone Company of the Carolinas	
(South Carolina)	UTSC

ATTACHMENT 2

(1) Show all parts of the network to the end-user and POP, inter-office transport facilities, central office, port, ATM/Frame Relay switches, long distance facilities, etc.) and who owns each part.

Attachment 3 depicts the network diagrams for each of the following Embarq services:

Frame Relay Service
Asynchronous Transfer Mode Service (ATM)
Custom Access Solutions

(2) What are the rate elements of each service? Identify the assets, activities (e.g., labor), and functions Embarq provides with respect to each rate element.

Frame Relay Service - Service Components

(A) Access to the Frame Relay Network

Special access channel terminations or electrical cross-connects are used to connect the customer premises to the FRS UNI or NNI Port Connection. Special access channel terminations are provided under Section 7 preceding, and are available at speeds of 56.0/64.0 kbps through 1.544 Mbps for the UNI Port Connection and at 1.544 Mbps and 44.736 Mbps for the NNI Port Connection. Electrical cross- connects are provided under Section 17, following, and are available at 1.544 Mbps for the UNI Port Connection and 1.544 Mbps and 44.736 Mbps for the NNI Port Connection.

(B) User to Network Interface (UNI) Port Connection

The User to Network Interface (UNI) Port Connection is a standard interface used to connect the end user to the Telephone Company's frame relay network. It receives the data frame from the customer's network or CPE devices and verifies that the customer address destination is valid before relaying the frame. The UNI Port Connection is available at 56.0/64.0 kbps through 1.544 Mbps. The transmission speed of the UNI Port Connection may not exceed the transmission speed of the special access channel termination or electrical cross-connect. One special access channel termination or electrical cross-connect is required per UNI Port Connection.

(C) Network to Network Interface (NNI) Port Connection

The Network to Network Interface (NNI) Port Connection provides bi-directional polling between the Telephone Company's FRS switch and the interexchange carrier's or other customer's frame relay network. The NNI Port Connection is available at speeds of 384 kbps, 1.544 Mbps and 44.736 Mbps. The NNI Port Connection must be provided at the same transmission speed as the special access channel termination or electrical cross-connect. One special access channel termination or electrical cross-connect is required per NNI Port Connection

(D) Permanent Virtual Circuits (PVCs)

The PVC provides a software-defined electronic path between two port connections within the frame relay network. A UNI or NNI Port Connection can be associated with any number of PVCs. Since all PVCs need not be in use at the same time, it is possible for the total bandwidth of all PVCs associated with one Port Connection to exceed the bandwidth of the Port Connection. It is not possible, however, for the simultaneous aggregate of the PVC's throughput to exceed the bandwidth of the Port Connection. Such a relationship is referred to as over-subscription or overbooking, and when this occurs, there can be no guarantee that the bandwidth defined for that PVC will be available at any point in time.

(E) Committed Information Rate (CIR)

CIR defines the amount of data throughput on a designated PVC that the Telephone Company will support under normal operating conditions. Any data burst beyond the CIR may be labeled Discard Eligible (DE) if the data transfer rate exceeds the CIR of the PVC being used. If the frame relay network develops congestion, the frames marked DE may be discarded.

Asynchronous Transfer Mode (ATM) - Service Components

(A) ATM Access Termination

OC3 and OC12 ATM access terminations are based on distance. In addition, OC3 and OC12 access terminations will be provided with or without Telephone Company provided terminal equipment at the customer's premises. The mileage used to determine the monthly rate for access terminations located outside a Telephone Company wire center is the airline distance between the customers's designated premises and the Telephone Company serving wire center of that premises. The mileage measurement is determined by utilizing exchange maps and mileage tables located in designated Telephone Company offices for such purposes. When a customer elects to furnish its own terminal equipment at the customer's premises, the customer will work cooperatively with the Telephone Company to provide a compatible physical interface, and will identify approved equipment types for use in conjunction with Telephone Company provided equipment. The customer is responsible for providing all facilities and cabling necessary to connect customer provided equipment to the interface.

(B) ATM Interoffice Mileage

The ATM interoffice mileage rate element provides for the end office equipment and the transmission channel between the serving wirecenter of the customer's designated premises and the serving wire center of the ATM switch. ATM interoffice mileage rates are made up of the interoffice mileage facility rate and the interoffice mileage termination rate. ATM interoffice mileage rates are set forth in Section 8.6.6 following and are available at speeds of 1.544 Mbps (DS1), 3.088 Mbps (2xDS1), 4.632 Mbps (3xDS1), 6.176 Mbps (4xDS1), 7.72 Mbps (5xDS1), 9.264 Mbps (6xDS1), 44.736 Mbps (DS3), 155.52 Mbps (OC3), and 622.08 Mbps (OC12).

(1) ATM Interoffice Mileage Facility

The ATM interoffice mileage facility rate recovers the cost of the transmission path which extends between the serving wire center of the customer's designated premises and the Telephone Company serving wire center of the ATM switch, and includes primarily outside plant used to provide the facility.

(2) ATM Interoffice Mileage Termination

The ATM interoffice mileage termination rate recovers the cost of the end office equipment associated with terminating the facility (i.e., basic circuit equipment and termination at the serving wire center and/or ATM switch). The Telephone Company applies a 50% billing percentage to the mileage termination fixed rate on jointly owned circuits, and applies 100% on wholly owned circuits. When the ATM interoffice mileage facility is zero (i.e., collocated service wire centers), neither the interoffice mileage facility nor the interoffice mileage termination rate will apply.

(C) User to Network Interface (UNI) Port Connection

The UNI port connection is a standard interface used to connect the end user to the Telephone Company's ATM network. It receives the data cell from the customer's network or CPE devices and verifies that the customer address destination is valid before transferring the cell. The UNI port connection is available at speeds of 1.544 Mbps, 3.088 Mbps (2xDS1), 4.632 Mbps (3xDS1), 6.176 Mbps (4xDS1), 7.72 Mbps (5xDS1), 9.264 Mbps (6xDS1), 44.736 Mbps, 155.52 Mbps, and 622.08 Mbps. The UNI port connection must be provided at the same transmission speed as the electrical cross-connect or ATM access termination. One electrical cross-connect, special access channel termination or ATM access termination is required per UNI port connection.

(D) Network to Network Interface (NNI) Port Connection

The NNI port connection provides bi-directional polling between the Telephone Company's ATM switch and the interexchange carrier's or other customer's ATM network. The NNI port connection is available at speeds of 1.544 Mbps, 3.088 Mbps (2xDS1), 4.632 Mbps (3xDS1), 6.176 Mbps (4xDS1), 7.72 Mbps (5xDS1), 9.264 Mbps (6xDS1), 44.736 Mbps, 155.52 Mbps, and 622.08 Mbps. The NNI port connection must be provided at the same transmission speed as the electrical cross-connect or ATM access termination. One electrical cross-connect, special access channel termination or ATM access termination is required per NNI port connection.

(E) Permanent Virtual Circuits (PVCs)

The PVC provides a software defined electronic path between two port connections within the ATM network. An intraexchange PVC defines a path across the Telephone Company's ATM network and the customer's premises. An interexchange PVC defines a path between two Telephone Company ATM networks. Meetpoint billing arrangements do not apply to interexchange PVCs. A UNI or NNI port connection may be associated with any number of PVCs. Since all PVCs need not be in use at the same time, it is possible for the total bandwidth of all PVCs associated with one Port Connection to

exceed the bandwidth of the Port Connection. It is not possible, however, for the simultaneous aggregate of the PVC's throughput to exceed the bandwidth of the Port Connection. Such a relationship is referred to as oversubscription and, when this occurs, there can be no guarantee that the bandwidth defined for that PVC will be available at any point in time. The maximum port oversubscription allowed is by a subscription factor of 500%. Multiple PVCs can be defined over a single ATM UNI or NNI Port Connection, thereby providing a single access line with the capability to transmit data, voice, and video to multiple destinations simultaneously. A PVC can be set up as either a Virtual Path (VP) or a Virtual Channel (VC) type connection. A VP may contain multiple VCs, referred to as tunneling. Tunneling allows customers to establish VCs or end to end connections between the customer CPE via VPs. Customers may select from the following three Quality of Service (QoS) categories for PVCs to ensure greater reliability for mission critical application in the event of network congestion:

Lowest Priority – Unspecified Bit Rate (UBR)
Medium Priority – Variable Bit Rate-non-real time (VBR-nrt)
Highest Priority – Constant Bit Rate (CBR)

This flexibility helps to ensure maximum performance and satisfaction for individual customer communications applications.

(F) Information Rate (IR)

Information Rate (IR) defines the amount of data throughput on a designated PVC that the Telephone Company will support under normal operating conditions. IRs are traffic management parameters that allow the customer to fine tune implementation of ATM Service. The IRs of PVCs can be customer specified and can be ordered in increments of bandwidth. IRs can be used on CBR and VBR PVCs only. IRs for UBR are, by definition, not used, and IRs can be up to the line rate of the UNI port transfer rate. UBR uses available network bandwidth and is a "best effort" service, therefore, there are no guarantees with the delivery of UBR traffic. IRs are assigned to each PVC symmetrically (two-way). Any data burst beyond the IR may be labeled Discard Eligible (DE) if the data transfer rate exceeds the IR of the PVC being used. If the ATM network develops congestion, the cells marked DE may be discarded.

Custom Access Solutions

Custom Access Solutions is a 1.544 Mbps (DS1) facility. It is designed for the utilization of multiple voice channels and frame relay combination over a single 1.544 Mbps (DS1) facility. Custom Access Solutions includes frame relay channels and the use of a digital access and cross connect system (DACS). The channels designed for frame relay will be routed to a frame relay switch through the DACS to a customer location. Custom Access Solutions is limited to the frame relay and DACS capability, and the voice channels must be obtained separately.

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The frame relay portion of Custom Access Solutions is designed as part of a voice/frame relay combination. The customer is responsible for providing the voice capability. The valid combinations are shown in the chart below.

Voice Channels	Frame Relay Service				
	256 Kbps (4 Channels)	384 Kbps (6 Channels)	512 Kbps (8 Channels)	768 Kbps (12 Channels)	1.152 Mbps (18 Channels)
6	10	12	14	18	24*
8	12	14	16	20	N/A
10	14	16	18	22	N/A
12	16	18	20	24	N/A
14	18	20	22	N/A	N/A
16	20	22	24	N/A	N/A
18	22	24	N/A	N/A	N/A
20	24	N/A	N/A	N/A	N/A

Shaded area reflects total channels utilized for each combination.

* This option is only available to customers in the state of Nevada.

The provision of Customer Access Solutions requires terminating equipment (e.g., channel service unit) at the customer's premises to allow for the appropriate voice and frame relay channels. The customer is responsible for providing this equipment.

(3) For each service, what is the rate for each applicable rate element and where (tariff number and page) is each such rate found.

The sections and page numbers within the tariff for each applicable rate element per service are. Examples of detailed information is shown on Attachment 4.

Frame Relay Service – FCC #1, Section 8.2.5, pages 8-9 to 8-27

Asynchronous Transfer Mode (ATM) – FCC #1, Section 8.6.6, pages 8-222 to 8-336

Custom Access Solutions – FCC #1, Section 8.7.5, pages 8-343 to 8-422

(4) What entity buys each rate element?

The buyers of these Embarq services are either end user customers or carriers.

5- Please provide a list of access services that an IXC would purchase from Embarq to provide services comparable to the Embarq services identified in the petition.

Voice Grade - A channel for the transmission of analog signals within an approximate bandwidth of 300-3000 Hz.

Digital Data - A channel for the digital transmission of synchronous serial data at rates of 2.4, 4.8, 9.6, 19.2, 56.0 or 64.0 kbps.

High Capacity - A channel for the transmission of isochronous serial digital data at rates of 1.544 (DS1) or 44.736 (DS3) Mbps, or the transmission of synchronous transport signals at the rate of 51.84 Mbps (STS1).

OptiPoint - A point-to-point channel providing high speed synchronous optical fiber-based full duplex data transmission capabilities at rates of 155.52 Mbps (OC3), 622.08 Mbps (OC12), 2488.32 Mbps (OC48), or 9953.28 Mbps (OC192).

6- Please diagram all parts of the Embarq network used to provide these services (e.g. show channel terminations (or equivalent) to the end-user and POP, interoffice transport facilities and central office.

Diagrams are attached as Exhibit 3..

7- What are the rate elements of each service? Identify the assets, activities (e.g., labor), and functions Embarq provides with respect to each rate element.

Channel Termination (Chan Term): The Channel Termination rate category provides for the communications path between a customer designated premises and the serving wire center or WATS Serving Office of that premises. Included as part of the Channel Termination is a standard channel interface arrangement which defines the technical characteristics associated with the type of facilities to which the access service is to be connected at the point of termination (POT) and the type of signaling capability if any.

Channel Mileage: The Channel Mileage rate category provides for the end office equipment and the transmission channel between the serving wire centers associated with two Customer designated premises, between a serving wire center associated with a Customer designated premises and a Telephone Company hub, between two Telephone Company hubs or between a WATS Serving Office and a Customer serving wire center when the two are not co-located.

Channel Mileage rates are made up of the Channel Mileage Facility rate (per mile rate) and the Channel Mileage Termination rate (fixed rate).

8- For each service, what is the rate for each applicable rate element and where (Tariff number and page) is each found?

Please see Attachment 4.

Embarq Local Operating Companies' Petition for Waiver to Permit Pricing Flexibility for Specialized Network Services

Attachment 3
Frame Relay Example

